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UNITED STATES OF AMERICA

9 UNITED STATES DISTRICT COURT

10 FOR THE CENTRAL DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 YAN SUI,

15 Defendant.  
16

No. 2:24-cr-00498-JAK

GOVERNMENT'S OPPOSITION TO  
DEFENDANT'S MOTION TO CHANGE VENUE

Hearing Date: September 26, 2024

Hearing Time: 10:30 a.m.

Location: Courtroom of the  
Hon. John A.  
Kronstadt

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18 Plaintiff United States of America, by and through its counsel  
19 of record, the United States Attorney for the Central District of  
20 California and Assistant United States Attorney Matt Coe-Odess,  
21 hereby files its Opposition to Defendant's Motion for Change of Venue  
22 Pursuant to Federal Rule of Criminal Procedure 21 to District Court  
23 in Santa Ana (Dkt. 14).

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1 This opposition is based upon the attached memorandum of points  
2 and authorities, the files and records in this case, and such further  
3 evidence and argument as the Court may permit.

4 Dated: September 19, 2024

Respectfully submitted,

5 E. MARTIN ESTRADA  
6 United States Attorney

7 MACK E. JENKINS  
8 Assistant United States Attorney  
9 Chief, Criminal Division

10 /s/  
MATT COE-ODESS  
Assistant United States Attorney

11 Attorneys for Plaintiff  
12 UNITED STATES OF AMERICA  
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**MEMORANDUM OF POINTS AND AUTHORITIES****I. INTRODUCTION**

Defendant's motion to change venue to the Southern Division of the Central District of California appears to be based primarily on his assertion that the Honorable Judge Kronstadt "has prejudice against [him]." (Motion at 3.) But this is not a valid legal reason to change venue. Moreover, as reflected in the order transferring this related case back to this Court, judicial efficiency and the prompt administration of justice favor adjudicating this case in the Western Division, specifically in front of this Court, which has extensive knowledge of the relevant facts from a related case involving the defendant and potential witnesses that dates back over a decade. For these reasons, defendant's motion should be denied.<sup>1</sup>

**II. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND****A. Bankruptcy Proceeding**

On July 27, 2011, defendant filed a voluntary Chapter 7 petition. See 8:11-bk-20448-SC. Richard A. Marshack ("Trustee") was the duly appointed and acting Chapter 7 Trustee.

On June 4, 2015, the Court entered an order granting Trustee's motion for an order authorizing the sale of real property ("Sale Order") at 2176 Pacific Avenue #C, Costa Mesa, California ("Property"). (Dkt. 357). The Ninth Circuit Bankruptcy Appellate Panel ("BAP") dismissed Debtor's appeal of the Sale Order as moot on

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<sup>1</sup> Defendant's motion seeks to change venue "to the District Court in Santa Ana" pursuant to Federal Rule of Criminal Procedure 21. Because the Santa Ana District Court and Los Angeles District Court are both in the Central District of California, the government interprets defendant's request to change venue pursuant to be made pursuant to Rule 18, which governs the place of trial within a district.

1 July 29, 2015, as did the Ninth Circuit on June 9, 2017. (Dkt. 377  
2 and 535).

3 **B. Civil Litigation Proceeding**

4 On October 15, 2013, defendant Sui (and co-plaintiff Pei Yu  
5 Yang) filed a civil complaint against the Trustee and others, for  
6 various claims allegedly arising out of the bankruptcy proceedings.  
7 The case was assigned to Judge Kronstadt. See 8:13-cv-01607-JAK-KES.  
8 On April 10, 2015, the defendant's claims were dismissed. (Dkt.  
9 152).

10 Despite the dismissal, defendant Sui and Yang continued to file  
11 appeals and various motions, and on April 5, 2018, this Court deemed  
12 defendant Sui (and Yang) to be a vexatious litigant. (Dkt. 248).  
13 Despite being designated as a vexatious litigant, defendant Sui  
14 continued to file motions. (Dkt. 249, 251, 252, 262, 263, 266, 275-  
15 280, 283, 286, 294).

16 **C. Barton Orders in Bankruptcy Proceeding**

17 On February 4, 2022, the Bankruptcy Court entered an order which  
18 prohibited defendant Sui (and Yang) from suing the Trustee and/or his  
19 retained professionals without first obtaining consent from the  
20 Bankruptcy Court. (8:11-bk-20448-SC, Dkt. 724). On August 25, 2022,  
21 the Bankruptcy issued a second order (the "Barton Order") which  
22 stated that defendant Sui and his wife were "prohibited from filing  
23 pleadings in non-bankruptcy forums without first complying with the  
24 Barton doctrine,<sup>2</sup> which shall apply to both Trustee and his retained  
25 professionals." (Dkt. 924).

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27 <sup>2</sup> The Barton doctrine requires that "leave of the appointing  
28 forum must be obtained by any party wishing to institute an action in  
a non-appointing forum against a trustee for the acts done in the  
(footnote cont'd on next page)

**D. Defendant Sui Violates the Barton Orders**

On at least three separate occasions - September 20, 2022, September 25, 2022, and September 26, 2022 - defendant Sui filed pleadings in non-bankruptcy forums against the Trustee and his retained professionals without first obtaining permission from the bankruptcy court.

On September 20, 2022, defendant Sui attempted to file a "Complaint to Recover Real Property and for Damages . . ." ("District Court Complaint") in the District Court for the Central District of California. The District Court Complaint sought to assert sixteen claims for relief, including civil and criminal claims, and named the Trustee and his general counsel as defendants. The next day, in District Court Case No. 8:13-cv-01607-JAK-KES, the District Court entered a "Notice and Order Re Filing by Vexatious Litigant" ("Order Re District Court Complaint"), which ordered that the District Court Complaint not be filed based on the District Court's prefiling order. (Dkt. 277.)

On September 25, 2022, defendant Sui attempted to file in the District Court a "Motion for Order that Qui Tam Complaint Be Filed" ("Qui Tam Motion"), seeking an order that the District Court Complaint be filed. The next day, in District Court Case No. 8:13-cv-01607-JAK-KES, the District Court entered a "Notice and Order Re Filing by Vexatious Litigant" ("Order Re Qui Tam Motion"), which ordered that the Qui Tam Motion not be filed based on the District Court's prefiling order. (Dkt. 279.)

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trustee's official capacity and within the trustee's authority as an officer of the court." ACE Insurance Co., Ltd. v. Smith (In re BCE West, L.P.), 2006 WL 8422206, \*2 (D. Ariz. Sept. 20, 2006) (quoting In re DeLorean Motor Co., 991 F.2d 1236, 1240 (6th Cir. 1993), Barton v. Barbour, 104 U.S. 126 (1881)).

1 On September 26, 2022, defendant Sui either filed or attempted  
2 to file a second "Complaint to Recover Real Property and for Damages"  
3 ("Second OCSC Complaint") in the Orange County Superior Court, naming  
4 the Trustee and his general counsel as defendants in the complaint  
5 containing nine claims for relief.

6 **E. Criminal Contempt Charges**

7 On August 16, 2024, a grand jury charged defendant in an  
8 indictment with three counts of criminal contempt in violation of 18  
9 U.S.C. § 401(3). (CRIM CASE NO., Dkt. 1). The indictment alleges  
10 that on the three separate occasions described above - on September  
11 20, 2022, September 25, 2022, and September 26, 2022 - the defendant  
12 willfully and knowingly disobeyed definite orders issued by the  
13 United States Bankruptcy Court in the Central District of California  
14 which prohibited defendant from filing pleadings in non-bankruptcy  
15 forums against the bankruptcy trustee and his retained professionals  
16 without first obtaining permission from the bankruptcy court.

17 **III. LEGAL STANDARD**

18 "[T]he government must prosecute an offense in the district  
19 where the offense was committed." Fed. R. Crim. P. 18 (emphasis  
20 added). "The Court must set the place of trial within the district  
21 with due regard for the convenience of the defendant, any victim, and  
22 the witnesses, and the prompt administration of justice." Id.

23 A defendant does not have a right to be tried in a particular  
24 division. Carillo v. Squier, 137 F.2d 648, 648-49 (9th Cir. 1943).  
25 The Constitution only requires that a defendant be tried in the state  
26 and district where the conduct occurred. U.S. Const. amend 6. A  
27 District Judge has broad discretion in determining where within a  
28 district a trial will be held. See United States v. Stanko, 528 F.3d

1 581, 584 (8th Cir. 2008) ("A district judge has broad discretion in  
2 determining where within a district a trial will be held . . . .");  
3 see also United States v. Alvarado, 647 F.2d 537, 539 (5th Cir. 1981)  
4 ("In criminal actions, the constitutional unit of venue is the  
5 district, not the division" and "the trial judge has broad discretion  
6 in determining whether transfer is warranted.")

#### 7 **IV. ARGUMENT**

8 Defendant's motion should be denied. He is properly charged in  
9 the district where he committed his crimes. Beyond alleging that the  
10 presiding judge is prejudiced against him, defendant also fails to  
11 state any particular and specific prejudice he would suffer from a  
12 trial occurring in the Western Division rather than the Southern  
13 Division. Although the Southern Division may be a more convenient  
14 venue for defendant, the prompt administration of justice supports  
15 keeping this case in the Western Division, where the offense conduct  
16 occurred. Transferring this matter to a different division would be  
17 a waste of judicial resources, as it would require a new judge to get  
18 up to speed on the lengthy history of litigation regarding this  
19 defendant and potential witnesses. Because the prompt administration  
20 of justice supports this case staying in the Western Division,  
21 defendant's motion should be denied.

#### 22 **V. CONCLUSION**

23 For the foregoing reasons, the government respectfully requests  
24 that this Court deny defendant's motion to change venue.  
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